

² The Board notes that OWCP received additional evidence following the June 28, 2021 decision. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the caserecord that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

to her accepted September 18, 2019 employment injury; and (2) whether appellant has met her burden of proof to establish disability from work commencing November 12, 2020 causally related to her accepted September 18, 2019 employment injury.

FACTUAL HISTORY

On November 7, 2019 appellant, then a 58-year-old manager, filed a traumatic injury claim (Form CA-1) alleging that, on September 18, 2019, she sustained left knee and calf injuries while in the performance of duty when her left foot became stuck in an elevator doorway as she exited, causing her left knee to bend. She did not stop work at the time of injury.

In a development letter dated January 8, 2020, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a February 4, 2020 attending physician's report (Form CA-20), Dr. Sanjay J. Chauhan, a Board-certified psychiatrist and neurologist, noted performing an initial physical examination and provided a history of the claimed September 18, 2019 employment incident. He prescribed medication and returned appellant to full-duty work.

By decision dated February 18, 2020, OWCP accepted that the September 18, 2019 employment incident occurred at the time and place, and in the manner alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. OWCP concluded that the requirements had not been met for establishing an injury as defined by FECA.

On February 26, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP received a February 4, 2020 narrative report by Dr. Chauhan, noting appellant's account of the accepted September 18, 2019 employment incident. Appellant continued to experience pain and swelling in the left knee, left ankle pain, and secondary left hip pain. Dr. Chauhan related that on November 7, 2019 appellant had been referred for a magnetic resonance imaging (MRI) scan of the left knee by Dr. Esmeralda Arreola, a family practitioner and her primary care physician, who was no longer treating appellant for the left lower extremity injury. He opined that the December 26, 2019 MRI scan study of the left knee demonstrated osteoarthritic changes of the left knee, full-thickness cartilage loss in the medial compartment with bone-on-bone, a torn medial meniscus, and likely torn lateral meniscus. On examination of the left lower extremity, Dr. Chauhan found diminished knee reflexes, an antalgic gait favoring the left lower extremity, inability to tandem walk, mild-to-moderate effusion below the knee to mid-calf and slightly above the patella, pitting edema of the shin, tenderness to palpation of the anterior dorsal aspect of the ankle, and diminished range of ankle motion in all planes. He diagnosed an injury to the left knee and ankle, left knee sprain, left ankle ligamentous sprain, aggravation of osteoarthritis of the left knee, aggravation of left hip trochanteric bursitis, rule out medial and lateral meniscus tear of the left knee, and rule out cartilage tear of the left knee and ankle. Dr. Chauhan opined that the mechanism of injury was consistent with the listed diagnosis and complaints. Appellant had twisted her left knee and ankle when her left foot became caught in the

elevator, which caused “twisting and torquing forces” to the left knee and ankle, causing a sprain of both joints and “probable tears of meniscus and cartilage.” Dr. Chauhan returned appellant to regular duty as her tasks were mostly sedentary.

Following a preliminary review, by decision dated May 4, 2020, an OWCP hearing representative set aside the February 18, 2020 decision, finding that Dr. Chauhan’s February 4, 2020 report had raised an inference of causal relationship between the diagnosed conditions and the September 18, 2019 employment incident. The hearing representative remanded the case to OWCP to refer appellant, the medical record, and a statement of accepted facts (SOAF) to a specialist in the appropriate field of medicine for a second opinion evaluation, to be followed by issuance of a *de novo* decision.

On May 19, 2020 OWCP requested that appellant submit a copy of the December 26, 2019 MRI scan study referenced by Dr. Chauhan.

On June 30, 2020 OWCP referred appellant, the medical record, a May 18, 2020 SOAF, and a series of questions for a second opinion by Dr. Don Kevin Lester, a Board-certified orthopedic surgeon, regarding the status of appellant’s accepted conditions. In his July 22, 2020 report, Dr. Lester reviewed the medical record and SOAF. He noted a history of accepted April 30, 2015 and November 28, 2016 right meniscal tears.³ Dr. Lester noted that appellant had worked daily from the time of the September 18, 2019 employment incident until March 18, 2020. Appellant had a blood clot in her left lower extremity, which required hospitalization on July 2, 2020, and was on a prescription anticoagulant. Dr. Lester noted appellant’s symptoms of left medial proximal tibial pain, and some pain at the dorsum, anteromedial, and posteromedial aspects of the left ankle. He observed that appellant ambulated with a walker. On examination, Dr. Lester observed limited left knee extension with stable ligaments, tenderness throughout the left lower extremity, edema in the left lower extremity, which appellant attributed to a blood clot, and tenderness of the left ankle. He diagnosed degenerative arthritis of the left knee, edema with pain about the left ankle, left meniscal tears, edema of the bilateral legs, left worse than right, deep vein thrombosis (DVT) of the left lower extremity, morbid obesity, resolved bursitis of the left hip and left shoulder, and status post right knee injuries with meniscal tears, resolved. Dr. Lester opined that the September 18, 2019 employment incident aggravated left knee arthritis and left ankle soft tissues, “may or may not have” torn her left knee cartilage, but did not accelerate or precipitate left knee arthritis. He noted that appellant’s morbid obesity made it difficult for her to remain upright, increasing her risk of falls and lower extremity injuries. Dr. Lester commented that left ankle x-rays would be helpful in assessing her condition, although her left ankle pain was “as likely due to edema as her near fall.” He also opined that the September 18, 2019 employment incident, in combination with her obesity, “could aggravate the preexisting condition of degenerative arthritis.” Dr. Lester noted that it did not “appear as though her work-related injury is likely causing her current problems.” He noted that the September 18, 2019 employment incident “would not likely

³ Under OWCP File No. xxxxxx074, OWCP accepted an April 30, 2015 right medial meniscus tear and right knee sprain, with OWCP-authorized December 2, 2015 arthroscopic repair. Under OWCP File No. xxxxxx442, OWCP accepted a November 28, 2016 right knee sprain with complex medial meniscal tear. OWCP authorized April 18, 2018 arthroscopic repair. OWCP has not administratively combined these claims with the current claim, OWCP File No. xxxxxx127.

be associated” with the DVT or left knee osteoarthritis, and that her left ankle problem was likely caused by edema. Dr. Lester returned appellant to full, unrestricted duty.

OWCP received a May 31, 2020 report by Dr. Chauhan, who opined that the September 18, 2019 employment incident “by direct causation caused twisting, torquing forces to the left knee and ankle causing injury to the left knee and ankle,” with the diagnoses noted in his February 4, 2020 report.

By decision dated September 23, 2020, OWCP accepted the claim for left knee sprain, left ankle sprain, and temporary aggravation of left knee arthritis.

OWCP received a September 3, 2020 report by Dr. Chauhan, noting that appellant had been prescribed Eliquis, a blood thinner, due to a DVT in the left lower extremity that developed on approximately July 10, 2020. Dr. Chauhan indicated that appellant was off work due to the DVT as she had been directed by her primary care physician to keep her left lower extremity extended. He related that appellant experienced worsening left knee and ankle pain with secondary left hip pain. Dr. Chauhan commented that appellant ambulated with a walker due to bilateral knee pain. On examination of the left lower extremity, he noted 4+/5 muscle weakness, diminished knee reflexes, knee effusion, restricted knee flexion, and limited range of ankle motion in all planes. Dr. Chauhan diagnosed an acute DVT of the left lower extremity, and reiterated the diagnoses provided in his February 4, 2020 report. He opined that the DVT was caused by the September 18, 2019 employment injury by precipitation, due to prolonged sitting at work superimposed on preexisting conditions of obesity and borderline diabetes. Dr. Chauhan found appellant totally disabled for work due to the DVT from July 1 through September 15, 2020.

OWCP received a September 26, 2020 report by Dr. Chauhan, noting his disagreement with Dr. Lester’s July 22, 2020 report. Dr. Chauhan opined that appellant sustained a permanent aggravation of left knee osteoarthritis triggered by synovial and ligamentous inflammation precipitated by the accepted September 18, 2019 employment injury. He noted that appellant’s obesity had made her more susceptible to serious injury from this type of incident, with swelling of the menisci, joint capsule, ligaments, and secondary edema of the bony structure due to twisting forces and weight bearing. Dr. Chauhan concurred that left ankle x-rays would be necessary to fully assess appellant’s condition. Regarding the etiology of the DVT, he opined that the clot had formed in the injured leg due to hypomobility as appellant was unable to move her left knee and ankle fully after the September 18, 2019 employment injury. Dr. Chauhan explained that joint swelling also caused venous stasis, ultimately leading to DVT.⁴

On December 1, 2020 appellant filed a claim for compensation (Form CA-7) for intermittent disability for the period November 12 through December 23, 2020. On December 30, 2020 appellant filed a Form CA-7 for intermittent disability for the period December 23, 2020 through February 4, 2021.⁵ In support of the claims, she submitted a December 23, 2020 duty

⁴ A November 20, 2020 MRI scan of the left ankle demonstrated low signal thickening of the anterior inferior tibiofibular ligament and the deltoid ligament on the medial side, suggesting prior injury and bulky scar formation, posterior and inferior calcaneal spurring, slight entrapment at the Achilles tendon insertion on the posterior calcaneus, and extensive subcutaneous edema around the ankle and lower leg.

⁵ Appellant submitted additional CA-7 forms for periods after February 4, 2021.

status report (Form CA-17) by Dr. Chauhan, holding her off work from December 23, 2020 through February 4, 2021.

In a development letter dated January 27, 2021, OWCP notified appellant of the deficiencies of her claim for compensation. It explained that it was not clear when or why she had stopped working. OWCP requested that appellant submit a report from her attending physician, with medical rationale and objective findings, explaining how and why the accepted conditions had disabled her from work for the claimed period. It afforded her 30 days to submit the requested evidence.

In a separate development letter also dated January 27, 2021, OWCP noted that appellant had implicated the left lower extremity DVT as a consequential condition. It requested that she provide additional medical records and a rationalized report from her attending physician on the cause of the left lower extremity DVT. OWCP afforded appellant 30 days to submit the requested evidence.

In response, appellant submitted a November 12, 2020 report by Dr. Chauhan, who noted appellant's continuing left knee and ankle pain, with cramping in the left lower extremity interfering with sleep. Dr. Chauhan opined that the left lower extremity DVT had been aggravated by the accepted left knee conditions.

In a February 4, 2021 Form CA-17, Dr. Chauhan found appellant totally disabled from work for the period February 4 through March 18, 2021.

In a report dated February 12, 2021, Dr. Arreola held appellant off work from July 2 through November 15, 2020 due to the left lower extremity DVT.

In a February 15, 2021 statement, appellant asserted that she had no personal or family history of DVT prior to the accepted September 18, 2019 employment injury. She noted that approximately one week prior to July 2, 2020, she experienced significant swelling and discoloration of the left lower extremity with a sensation of pressure. Appellant's physician hospitalized her on July 2, 2020. She had been prescribed blood thinners to treat the DVT.

Appellant submitted unsigned hospital discharge instructions dated July 9, 2020 for DVT.

On March 18, 2021 OWCP routed the medical record, a March 17, 2021 SOAF, and a list of questions to Dr. David I. Krohn, a Board-certified internist serving as an OWCP district medical adviser (DMA), for review and determination regarding whether the acceptance of the claim should be expanded to include the diagnosis of left lower extremity DVT as a consequential injury. OWCP requested that Dr. Krohn discuss any disagreement he may have with the findings and conclusions of Dr. Chauhan.

OWCP received a March 18, 2021 report by Dr. Chauhan, who opined that the left lower extremity DVT was caused by immobility due to the accepted left knee injury and prolonged sitting while at work, superimposed on a history of obesity and borderline diabetes. Dr. Chauhan noted that appellant underwent a left ankle injection on or about January 18, 2021 that alleviated her pain symptoms for only a few days.

In reports dated April 27, 2021, Dr. Krohn reviewed the SOAF and medical record. He noted that DVTs developed in individuals with inherited thrombophilia, which could be diagnosed through screening for prothrombin mutations. Dr. Krohn explained that while medical studies supported that immobility was a potential causal factor in the development of a DVT, those studies reflected venous stasis associated with bed rest or immobilization in a cast, and not a relative decrease in mobility in a previously fully ambulatory individual such as appellant. He also noted that appellant's history of diabetes, hypertension, and morbid obesity were important risk factors for the development of DVT. Dr. Krohn, therefore, concluded that Dr. Chauhan's opinion that appellant's DVT was causally related to the accepted September 18, 2019 employment injury was not consistent with the factual history of the case or the medical findings of record.

By decision dated June 28, 2021, OWCP denied the claim under section 10.501(a) of FECA,⁶ finding that the medical evidence of record was insufficient to establish that appellant was disabled for work from November 12, 2020 onward due to the accepted left lower extremity conditions. It noted that she had been off work "at least since July 2, 2020 due to deep venous thrombosis, which had not been accepted as work related."

LEGAL PRECEDENT -- ISSUE 1

When an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁷

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹ The weight of medical evidence is

⁶ 20 C.F.R. § 10.501(a).

⁷ *S.B.*, Docket No. 19-0634 (issued September 19, 2019).

⁸ *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

⁹ *R.P.*, Docket No. 18-1591 (issued May 8, 2019).

determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that this case not in posture for decision.

OWCP accepted that appellant sustained a left knee sprain, left ankle sprain, and temporary aggravation of left knee arthritis causally related to the September 18, 2019 employment injury. Appellant claimed compensation commencing November 12, 2020 due to disability precipitated by the accepted employment conditions and a left lower extremity DVT.

OWCP had previously obtained a second opinion from Dr. Lester, who provided a July 22, 2020 report asserting that the September 18, 2019 employment injury "would not likely be associated" with the diagnosed left lower extremity DVT.

Dr. Chauhan, a treating neurologist and psychiatrist, provided reports dated from September 3, 2020 through March 18, 2021 supporting a causal relationship between the DVT and the September 18, 2019 employment injury. In his September 3, 2020 report, he opined that the DVT was caused by the prolonged sitting at work superimposed on preexisting nonoccupational conditions. Dr. Chauhan noted in his November 12, 2020 report that appellant experienced continued left knee and ankle pain with cramping in the left lower extremity, which aggravated the DVT. He explained in his September 26, 2020 and March 18, 2021 reports that immobility in the injured left lower extremity due to a permanent aggravation of left knee osteoarthritis with joint swelling contributed to venous stasis leading to formation of the DVT. In reports dated December 23, 2020 and February 4, 2021, Dr. Chauhan held appellant off work from November 12, 2020 through February 4, 2021.

In a report dated April 27, 2021, Dr. Krohn, the DMA, opined that the degree of immobilization caused by the September 18, 2019 employment injury was insufficient to cause the left lower extremity DVT. He, therefore, characterized Dr. Chauhan's opinion that appellant's DVT was causally related to the accepted September 18, 2019 employment injury as inconsistent with the factual and medical history of the case.

As Dr. Lester and Dr. Krohn, for the government, both opined that the left lower extremity DVT was unrelated to the September 18, 2019 employment injury, and Dr. Chauhan, for appellant, supported a causal relationship between development of the DVT and the accepted injury, the Board finds that there is an unresolved conflict of medical opinion regarding whether appellant has established an additional condition as causally related to the accepted September 18, 2019 employment injury.

OWCP's regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP

¹⁰ *Id.*

medical adviser, OWCP shall appoint a third physician to make an examination.¹¹ The Board will, therefore, remand the case to OWCP for referral to an impartial medical specialist regarding whether she has submitted sufficient evidence to establish disability for work beginning November 12, 2020 due to the accepted September 18, 2019 employment injury. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹² For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹³ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.¹⁴

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁵

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁶ Rationalized medical evidence is medical evidence, which includes a physician’s detailed medical opinion on the issue of whether there is a causal relationship between the claimant’s claimed disability and the accepted employment injury. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale

¹¹ 5 U.S.C. § 8123(a); *S.C.*, Docket No. 20-0856 (issued August 26, 2021); *K.C.*, Docket No. 19-0137 (issued May 29, 2020); *M.W.*, Docket No. 19-1347 (issued December 5, 2019).

¹² *See C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹³ *Id.*

¹⁴ 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 12; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹⁵ *Id.*

¹⁶ *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

explaining the nature of the relationship between the claimed period of disability and the accepted employment injury.¹⁷

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁸ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁹

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.²⁰ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.²¹ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.²²

ANALYSIS -- ISSUE 2

In light of the Board's disposition of the issue of whether appellant sustained an additional condition as causally related to his accepted employment injury, it is premature to address the issue of disability.²³

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁷ *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

¹⁸ 20 C.F.R. § 10.501(a); *C.E.*, Docket No. 19-1617 (issued June 3, 2020); *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *see T.A.*, Docket No. 18-0431 (issued November 7, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁹ *C.E.*, *id.*; *M.M.*, *id.*; *see V.B.*, Docket No. 18-1273 (issued March 4, 2019); *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

²⁰ 5 U.S.C. § 8123(a); *K.C.*, *supra* note 11; *M.W.*, *supra* note 11; *C.T.*, Docket No. 19-0508 (issued September 5, 2019); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

²¹ 20 C.F.R. § 10.321.

²² *S.C.*, *supra* note 11; *K.C.*, *supra* note 11; *M.W.*, *supra* note 11; *C.T.*, *supra* note 20; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

²³ *See C.N.*, Docket No. 19-0621 (issued September 10, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: May 23, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board